

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

COLTON JAMES ROOD,

Plaintiff,

v.

ISAAC LOCKWOOD, et al.,

Defendants.

No. 2:20-cv-0271 KJM AC P

ORDER

Plaintiff, a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983, has filed a motion to dismiss defendants' motion for summary judgment. ECF No. 66. He requests that the motion for summary judgment be denied because defendants failed to serve him with a Rand Notice for nearly two years. Id. at 2. He further asserts that defendants failed to comply with the court's November 23, 2022 order, which required defendants serve plaintiff with a Rand Notice within twenty-four hours, because he did not receive the notice until November 28, 2022. Id.

Defendants were not required to serve plaintiff with a Rand Notice until they filed a motion for summary judgment. See ECF No. 25 at 4, ¶ 11 (citing Woods v. Carey, 684 F.3d 934, 935 (9th Cir. 2012); Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998)). When they failed to serve plaintiff with a Rand Notice at the same time they served their motion for summary judgment, they were ordered to do so within twenty-four hours. ECF No. 64. Defendants

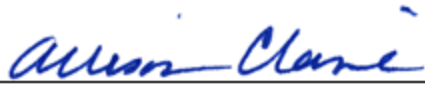
1 proceeded to file a Rand Notice with a certificate of service indicating that they served the notice
2 on November 23, 2022 (ECF No. 65 at 5), and counsel has since filed a declaration that avers the
3 same (ECF No. 67). It therefore appears that defendants complied with the November 23, 2022
4 order. The relevant date is that on which defendants served the notice, not the date on which it
5 was received by plaintiff. Plaintiff's motion to dismiss the motion for summary judgment will
6 therefore be denied and plaintiff will be given an opportunity to file an opposition addressing the
7 merits of the motion.

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. Plaintiff's motion to dismiss defendants' motion for summary judgment (ECF No. 66)
10 is DENIED; and

11 2. Within twenty-one days after the filing date of this order, plaintiff shall file and serve
12 an opposition to the motion for summary judgment or a statement of non-opposition. Failure to
13 comply with this order will result in a recommendation that this action be dismissed without
14 prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

15 DATED: December 8, 2022

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17 ALLISON CLAIRE
18 UNITED STATES MAGISTRATE JUDGE
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